Supreme Court, U.S.
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No. 97-643

In the Supreme Court of the United States

OCTOBER TERM, 1997

UNITED STATES OF AMERICA, PETITIONER

v.

VICKIE S. CABRALES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether venue in a prosecution for money laundering under 18 U.S.C. 1956 and 1957 is proper in the district where the illicit funds were generated, when the defendant's unlawful financial transactions occurred in another district.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-9a) is reported at 109 F.3d 471. A subsequent amendment to that opinion (Br. in Opp. App. 1) is reported at 115 F.3d 621. The order of the district court (Pet. App. 10a-12a) is unreported. The report, recommendation, and order of the magistrate (Pet. App. 13a-16a) is unreported.

JURISDICTION

The court of appeals entered its judgment on March 24, 1997. A petition for rehearing was denied on June 12, 1997. Pet. App. 21a. On September 5, 1997, Justice Thomas extended the time for filing a petition for a writ of certiorari to and including October 10, 1997. The petition was filed on October 10, 1997, and was

granted on January 16, 1998. 118 S. Ct. 751. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS AND RULE INVOLVED

1. Article III, Section 2, Clause 3 of the United States Constitution provides as follows:

> The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

2. The Sixth Amendment to the United States Constitution provides as follows:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

3. Section 1956(a)(1) of Title 18, United States Code, provides in pertinent part as follows:

> Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction

> which in fact involves the proceeds of specified unlawful activity —
>
> * * * * *
>
> (B) knowing that the transaction is designed in whole or in part —
>
> * * * * *
>
> (ii) to avoid a transaction reporting requirement under State or Federal law,
>
> shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

4. Section 1957(a) of Title 18, United States Code, provides in pertinent part as follows:

> Whoever * * * knowingly engages or attempts to engage in a monetary transaction in criminally derived property that is of a value greater than $10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b).

5. Section 3237(a) of Title 18, United States Code, provides as follows:

> Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed.

> Any offense involving the use of the mails, transportation in interstate or foreign commerce, or the importation of an object or person into the United States is a continuing offense and, except as otherwise expressly provided by enactment of Congress, may be inquired of and prosecuted in any district from, through, or into which such commerce, mail matter, or imported object or person moves.

6. Rule 18, Federal Rules of Criminal Procedure, provides as follows:

> Except as otherwise permitted by statute or by these rules, the prosecution shall be had in a district in which the offense was committed. The court shall fix the place of trial within the district with due regard to the convenience of the defendant and the witnesses and the prompt administration of justice.

STATEMENT

1. Respondent Vickie Cabrales was charged in the Western District of Missouri in a three-count indictment. See Pet. App. 17a-20a. Count I alleged that respondent in that district and elsewhere had conspired to avoid a transaction-reporting requirement, in violation of 18 U.S.C. 371. Pet. App. 18a-19a. Count II alleged that respondent in that district and elsewhere had conducted a financial transaction to avoid a transaction-reporting requirement, in violation of 18 U.S.C. 1956(a)(1)(B)(ii). Pet. App. 19a-20a. Count III alleged that respondent in that district and elsewhere had engaged in a monetary transaction in criminally derived property of a value greater than $10,000, in violation of 18 U.S.C. 1957. Pet. App. 20a. The

indictment alleged that respondent had first deposited a monetary instrument in the amount of $40,000 with the AmSouth Bank of Florida, see *ibid.*, and had shortly thereafter made four separate withdrawals of $9,500 each from the same bank, see *id.* at 19a. The indictment also alleged that the funds in question were derived from "the knowing and intentional distribution of cocaine, a Schedule II controlled substance." *Id.* at 18a, 19a, 20a.

The money laundering offenses described in Sections 1956(a)(1)(B)(ii) and 1957(a) require proof that the funds in question were the product of "specified unlawful activity," and that the defendant knew the funds to have been unlawfully derived. See 18 U.S.C. 1956(a)(1) (statute applies only if the defendant "know[s] that the property involved in a financial transaction represents the proceeds of some form of unlawful activity," and the transaction "in fact involves the proceeds of specified unlawful activity"); 18 U.S.C. 1957(a) (statute applies to person who "knowingly engages or attempts to engage in a monetary transaction in criminally derived property that is of a value greater than $10,000 and is derived from specified unlawful activity"). The term "specified unlawful activity" is defined by 18 U.S.C. 1956(c)(7) and includes "the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act)." 18 U.S.C. 1956(c)(7)(B)(i). See also 18 U.S.C. 1957(f)(3) (for purposes of Section 1957, the term "specified unlawful activity" has the same meaning as in Section 1956).

2. Respondent moved to dismiss the indictment on the ground of improper venue. The case was referred to a magistrate judge, who recommended that respon-

dent's motion be denied as to Count I (the conspiracy charge) and granted as to Counts II and III. Pet. App. 13a-16a. The magistrate judge observed that "[v]enue is proper in a district where the crime was committed." *Id.* at 13a. With respect to the money laundering offenses alleged in Counts II and III, the magistrate judge explained that "[t]he deposit and withdrawals occurred in the State of Florida" and that "[n]o activity of money laundering is alleged to have occurred in Missouri." *Id.* at 14a. On that basis, he concluded that venue for the money laundering charges was improper in the Western District of Missouri. *Ibid.* In so doing, the magistrate judge rejected the government's contention that venue was proper because the drug sales from which the funds were derived had occurred in that district. See *ibid.*[1]

The magistrate judge then addressed the conspiracy charge. He observed that "[v]enue is proper in a conspiracy case 'in any jurisdiction in which an overt act in furtherance of the conspiracy was committed by any of the conspirators.'" Pet. App. 14a (quoting *United States* v. *Bascope-Zurita*, 68 F.3d 1057, 1062 (8th Cir. 1995), cert. denied, 116 S. Ct. 741 (1996)).

[1] In October of 1992, respondent's mother, brother, and husband were convicted of participating in a cocaine distribution conspiracy operating in the Western District of Missouri and elsewhere. Gov't C.A. Br. 1-2. Respondent's mother and brother appealed, and their convictions and sentences were affirmed; respondent's husband did not appeal. *Id.* at 2 & n.1. In opposing respondent's motion to dismiss the money laundering charges at issue here, the government submitted to the magistrate judge its appellate brief from the prior case, which described in detail the evidence of illegal narcotics trafficking activities in the Western District of Missouri. See Gov't Response in Opposition to Defendant's Motion to Dismiss for Lack of Proper Venue, Attach. B (filed June 4, 1996).

Relying on the government's representation that respondent "was present in Missouri during the conspiracy, lived with a conspirator in Missouri, and participated in various activities in Missouri in furtherance of the conspiracy," *id.* at 14a-15a, the magistrate judge recommended that respondent's motion to dismiss the indictment be denied with respect to Count I, *id.* at 15a.

The district court adopted the recommendation of the magistrate judge and ordered that respondent's motion to dismiss the indictment for improper venue be denied as to Count I and granted as to Counts II and III. Pet. App. 10a-12a.

3. The court of appeals affirmed the district court's dismissal of Counts II and III of the indictment. Pet. App. 1a-9a.[2]

The court of appeals observed that "[b]oth Rule 18 of the Federal Rules of Criminal Procedure and the Constitution require that a person be tried for an offense where that offense is committed," and that the site of a charged offense "must be determined from the nature of the crime alleged and the location of the act or acts constituting it." Pet. App. 3a (quoting *United States* v. *Anderson*, 328 U.S. 699, 703 (1946)). The court acknowledged that, "[w]ere the location of the underlying criminal conduct, standing alone, sufficient to confer venue on a district, the money-laundering charges against [respondent] would be appropriately venued in Missouri." Pet. App. 6a n.4. The court also recognized that "[u]nder 18 U.S.C. 3237(a), 'continuing offenses' are deemed committed,

[2] Respondent did not appeal the district court's denial of her motion to dismiss with respect to Count I of the indictment. See Br. in Opp. App. 1.

and venue over those offenses is therefore proper, 'in any district in which such offense was begun, continued, or completed.'" *Id.* at 4a.

The court held, however, that respondent "was not accused of a 'continuing offense'" because the financial transactions in which she engaged "began, continued, and were completed only in Florida." Pet. App. 4a. In the court of appeals' view, the fact "[t]hat the money came from Missouri is of no moment in this case, because [respondent] dealt with it only in Florida." *Ibid.* The court also stated: "Counts II and III include no act committed by [respondent] in Missouri. Nor does the government charge that [respondent] transported the money from Missouri to Florida. Whether that would make a difference we need not decide in the present case." *Ibid.* The court concluded that venue was not proper in the Western District of Missouri because "[t]he only acts which formed the basis for the money-laundering charges in the instant case consisted of banking transactions which [respondent] executed only in Florida." *Id.* at 9a.

SUMMARY OF ARGUMENT

A. The relevant constitutional and statutory provisions state that a criminal defendant must be tried in a district where the offense was "committed." Congress and this Court have long recognized that a single offense may be committed in more than one location, and that "where a crime consists of distinct parts which have different localities the whole may be tried where any part can be proved to have been done." *United States* v. *Lombardo*, 241 U.S. 73, 77 (1916). The current statutory provision governing venue for multidistrict offenses, 18 U.S.C. 3237(a), reaches to

the limits of the Constitution and permits a federal criminal prosecution to be brought in any district in which the offense was "committed"—*i.e.*, "any district in which such offense was begun, continued, or completed."

B. The money laundering offenses alleged in the indictment were "committed," for purposes of the constitutional and statutory provisions governing venue in federal criminal cases, in, *inter alia*, the Western District of Missouri, because the charged offenses were "begun" in that district through the production of funds by means of drug trafficking activity. Proof that the laundered funds were the product of specified unlawful activity is an essential element of the offenses described in 18 U.S.C. 1956 and 1957. The central purpose of those money laundering provisions, moreover, is to expose and deter "specified unlawful activity" by proscribing the financial machinations that facilitate profitable, undetected commission of the predicate crimes.

The fact that respondent's deposit and withdrawals are alleged to have occurred in Florida does not mean that her money laundering offenses were committed only in that location. In a variety of circumstances, venue in a federal criminal case has been held proper despite the absence of evidence that the defendant was ever physically present in the district where the prosecution was brought. It is clear, in particular, that a federal crime can be "committed," for purposes of constitutional and statutory venue provisions, in a district where an element of the offense has been performed by some person other than the defendant. Because the predicate "specified unlawful activity" that is an element of the charged money laundering offenses occurred in the Western District of Mis-

souri, that district is a proper venue for the instant prosecution.

C. Permitting money laundering offenses to be prosecuted in the district where the "specified unlawful activity" occurred furthers the purposes underlying the requirement that a criminal prosecution be brought in the district where the offense was committed. The relevant constitutional and statutory venue provisions serve, first and foremost, to protect the ability of an accused person to mount a vigorous defense by increasing the likelihood that relevant evidence can be discovered and produced at trial. In many money laundering prosecutions, the principal issue in dispute is likely to be the origin of the funds involved in the pertinent financial transactions, rather than the fact of the transactions or the defendant's responsibility for them. A requirement that money laundering charges be brought only in the district where the defendant's financial transactions are alleged to have occurred would often foreclose trial in the district where evidence of the predicate specified unlawful activity is most readily available. Such a rule would impair the efficient conduct of such prosecutions (by hindering the government's ability to try money laundering counts together with charges for the predicate crimes) without contributing in any substantial or consistent way to the accused's ability to present an effective defense.

The requirement that a criminal case be tried in the district where the crime was committed also serves to ensure that the administration of the criminal justice system is visible and responsive to the victimized community. The money laundering offenses proscribed by 18 U.S.C. 1956 and 1957 are harmful because they facilitate the profitable com-

mission of "specified unlawful activity." The community in which the predicate crimes occurred is therefore the community most directly victimized by violations of the money laundering statute.

ARGUMENT

RESPONDENT WAS PROPERLY CHARGED WITH MONEY LAUNDERING IN THE WESTERN DISTRICT OF MISSOURI, THE SITE OF THE "SPECIFIED UNLAWFUL ACTIVITY" THAT GENERATED THE LAUNDERED FUNDS

A. A Criminal Offense Committed In More Than One District May Ordinarily Be Prosecuted In Any District Where It Was Committed

The applicable constitutional and statutory provisions require that a criminal defendant be tried in the State and district in which the offense "shall have been committed." U.S. Const. Art. III, § 2, Cl. 3; Amend. VI; 18 U.S.C. 3237(a); Fed. R. Crim. P. 18; pp. 2-3, *supra*. One commentator has observed:

> Strictly speaking [Article III, § 2, Cl. 3] is a venue provision, since it fixes the place of trial, while the [Sixth Amendment] is a vicinage provision, since it deals with the place from which the jurors are to be selected. This technical distinction has been of no importance. Although in theory both constitutional provisions could be satisfied by trying a defendant in one district of a state though the offense was committed in another district, so long as the jurors were selected from the district of the crime, no such procedure has ever been attempted, and it has been considered that trial in the district of the offense is required.

2 Charles A. Wright, *Federal Practice and Procedure* § 301, at 190 (2d ed. 1982) (footnotes omitted). As this court noted in *United States* v. *Anderson*, 328 U.S. 699, 704-705 (1946), "[t]he constitutional specification is geographic; and the geography prescribed is the district or districts within which the offense is committed." Absent a specific statutory provision defining the place or places at which venue will be proper, "the Court must base its determination on 'the nature of the crime alleged and the location of the act or acts constituting it.'" *United States* v. *Cores*, 356 U.S. 405, 408 (1958) (quoting *Anderson*, 328 U.S. at 703). See also, *e.g.*, *Platt* v. *Minnesota Mining & Mfg. Co.*, 376 U.S. 240, 245 (1964); *Travis* v. *United States*, 364 U.S. 631, 636 (1961); *United States* v. *Midstate Horticultural Co.*, 306 U.S. 161, 165-166 (1939); *Johnston* v. *United States*, 351 U.S. 215, 220-221 (1956); *United Staes* v. *Lombardo*, 241 U.S. 73, 77 (1916).

Under the common law, each criminal offense was deemed to have a single situs. 1 Wayne R. LaFave & Austin W. Scott, Jr., *Substantive Criminal Law* § 2.9, at 180 (1986). "In other words, the common law picked out one particular act (or omission) or result of the act (or omission) as vital for the determination of the place of commission (i.e. the situs) of each of the various crimes." *Ibid.* Congress and this Court have long recognized, however, that the Constitution does not mandate such a restrictive approach. As early as 1867, Congress recognized the concept of a criminal offense "begun in one judicial district of the United States and completed in another." Act of March 2, 1867, ch. 169, § 30, 14 Stat. 484. The 1867 Act provided that "every such offence shall be deemed to have been committed in either of the said districts, and may be

dealt with, inquired of, tried, determined and punished in either of the said districts, in the same manner as if it had been actually and wholly committed therein." *Ibid.*[3] This Court has repeatedly recognized that a single offense may be committed in more than one district and may be tried (absent a contrary statutory directive) in any district where it was committed. See, *e.g.*, *Anderson*, 328 U.S. at 705 ("the geography prescribed is the district or districts within which the offense is committed"). As this Court stated in *Lombardo*: "Undoubtedly where a crime consists of distinct parts which have different localities the whole may be tried where any part can be proved to have been done." 241 U.S. at 77.

The general venue statute governing multidistrict offenses provides that "any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in *any* district in which such offense was begun, continued, or completed." 18 U.S.C. 3237(a) (emphasis added). The breadth of the statutory language indicates that Congress intended Section 3237(a) to permit a federal prosecution to be brought in any district authorized by the Constitution. The 1948 Reviser's Note confirms that reading, explaining that "[t]he revised section removes all doubt as to the venue of continuing offenses and makes unnecessary special venue provisions except in cases where Congress desires to restrict the pro-

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[3] The current venue statute also authorizes the prosecution to be brought in any district where the crime was "continued," as well as in the districts where it was "begun" or "completed." 18 U.S.C. 3237(a).

secution of offenses to particular districts." 18 U.S.C. 3237 note.[4]

B. The Offense Of Money Laundering Is "Committed" In Part In The State And District Where The Predicate "Specified Unlawful Activity" Occurred

The money laundering offenses alleged in this case were committed, for purposes of the constitutional and statutory venue provisions, in, *inter alia*, the Western District of Missouri. An essential element of the offenses described in 18 U.S.C. 1956 and 1957 is that the laundered funds were the product of specified unlawful activity. Indeed, Congress has criminalized money laundering precisely because it facilitates the profitable commission of the underlying offenses. The fact that respondent was not charged with participation in the underlying narcotics crimes, and

[4] The Reviser's Note also states that the second paragraph of Section 3237(a), which deals with offenses involving use of the mails or transportation in interstate commerce, "was added to meet the situation created by the decision of [this Court] in *United States v. Johnson*," 323 U.S. 273 (1944). 18 U.S.C. 3237 note. The Court in *Johnson* held, as a matter of statutory construction, that a person charged with "us[ing] the mails" to deliver dentures constructed by an unlicensed person in violation of the Federal Denture Act could be prosecuted only in the district where the dentures were deposited in the mail. 323 U.S. at 274-278. The Court acknowledged, however, that "Congress may constitutionally make the practices which led to the Federal Denture Act triable in any federal district through which an offending denture is transported." *Id.* at 274. The subsequent amendment of Section 3237(a) supersedes the *Johnson* Court's statutory analysis and reflects Congress's intent to permit federal prosecutions to be brought in any district permitted by the Constitution, absent a specific statutory provision establishing more limited venue for a particular class of cases.

that the financial transactions in which she is alleged to have engaged occurred entirely in Florida, does not prevent the government from prosecuting her in the district where the drug trafficking occurred. In a variety of contexts, this Court and the lower federal courts have recognized that an offense has been "committed" in a particular district even though the defendant has not been shown to have personally performed any unlawful act, or indeed to have been physically present, in the district where the prosecution is brought.

1. The banking transactions in which respondent engaged would not have violated Section 1956(a)(1)(B)(ii) or 1957(a) if the funds in question had been acquired through lawful means. To obtain a conviction under either provision, the government must prove beyond a reasonable doubt both that the funds in question were the product of "specified unlawful activity" and that respondent knew the money to have been unlawfully derived. See p. 5, *supra*. The unlawful derivation of the laundered funds is therefore an essential element of the money laundering offense. Because a criminal "offense" is typically defined by reference to the elements that must be proved at trial, cf., *e.g.*, *United States* v. *Dixon*, 509 U.S. 688, 696-703 (1993), as a general matter, an "offense" is "committed"—*i.e.*, "begun, continued, or completed," 18 U.S.C. 3237(a)—in every district where conduct establishing an element of the crime occurs. See *Lombardo*, 241 U.S. at 77 ("where a crime consists of distinct parts which have different localities the whole may be tried where any part can be proved to have been done"). And because the conduct establishing that essential element occurred in the Western District of Missouri, the charged

offenses were quite literally "begun" in that district and venue was proper there.

In the context of particular federal statutes, the location of the acts establishing a particular element may not reasonably be regarded as an appropriate forum for prosecution of the offense.[5] The instant case, however, does not present such a situation. The existence of "specified unlawful activity" is hardly a peripheral element of the crime of money laundering. To the contrary, the existence of "specified unlawful activity" is at the heart of the offenses defined by Sections 1956 and 1957, since exposure and deterrence of the predicate criminal activity is the central purpose of the money laundering prohibition.

Congress viewed money laundering as a logical and prevalent outgrowth of the specified unlawful activities. The Senate Report accompanying the 1986 legislation enacting Sections 1956 and 1957 explained:

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[5] For example, 18 U.S.C. 922(g)(1) makes it a federal crime for a person previously convicted of a felony to "possess in or affecting commerce, any firearm or ammunition." This Court has construed the statute to require only "the minimal nexus that the firearm have been, at some time, in interstate commerce," *Scarborough* v. *United States*, 431 U.S. 563, 575 (1977) —an element typically established by proof that the firearm was manufactured in a State other than that in which the felon was found in possession of it. It does not necessarily follow, however, that venue in a prosecution under Section 922(g) is appropriate in the district where the firearm was manufactured. Cf. *Travis* v. *United States*, 364 U.S. 631, 635 (1961) (prosecution for filing a false affidavit with the National Labor Relations Board could be prosecuted only in the district where affidavits were filed, not where they were executed and mailed, because "[t]here would seem to be no offense, unless petitioner completed the filing in the District of Columbia").

> Money laundering is a crucial financial underpinning of organized crime and narcotics trafficking. Without money laundering, drug traffickers would literally drown in cash. Drug traffickers need money laundering to conceal the billions of dollars in cash generated annually in drug sales and to convert his cash into manageable form . . . Regrettably, every dollar laundered means another dollar available to support new supplies of cocaine and heroin on the streets of this country.

S. Rep. No. 433, 99th Cong., 2d Sess. 4 (1986). See also *id.* at 2 (the statute is essential "to curb the spread of money laundering, by which criminals have successfully disguised the nature and source of funds from their illegal enterprises"); H.R. Rep. No. 855, 99th Cong., 2d Sess. Pt. 1, at 8 (1986) (money laundering is "a profoundly important tool of drug traffickers and organized crime figures enabling them to use the proceeds of their crimes to finance further crimes and to infiltrate legitimate business"); *id.* at 13 ("If we can make the drug dealers' money worthless, then we have really struck a chord, and we have hit him where he bruises, and that is right in the pocketbook."). The prohibitions contained in Sections 1956 and 1957 are therefore best understood as an effort to combat the "specified unlawful activity" itself, by proscribing the financial transactions that facilitate profitable, undetected commission of the underlying crimes.[6]

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[6] See, *e.g.*, *United States* v. *Savage*, 67 F.3d 1435, 1441 (9th Cir. 1995) ("Congress passed the money laundering statutes to criminalize the means criminals use to cleanse their ill-gotten gains"), cert. denied, 116 S. Ct. 964 (1996); *United States* v. *LeBlanc*, 24 F.3d 340, 346 (1st Cir.) (Congress "intended to criminalize a broad array of transactions designed to facilitate

2. The court of appeals concluded that respondent was not subject to prosecution in the Western District of Missouri because

> [respondent] was not accused of a "continuing offense." She was charged with money laundering, for transactions which began, continued, and were completed only in Florida. That the money came from Missouri is of no moment in this case, because [respondent] dealt with it only in Florida.

Pet. App. 4a. The court also stated that "[t]he only acts which formed the basis for the money-laundering charges in the instant case consisted of banking transactions which [respondent] executed only in Florida." *Id.* at 9a. That analysis is unsound. To the extent that the court narrowed its focus to include only the financial transactions that were alleged, it overlooked a vital element of the crime. Proof that respondent engaged in the financial transactions alleged in the indictment would not suffice, standing alone, to support a conviction for money laundering. The government is required to prove in addition that the laundered funds were produced by specified unlawful activity, and that respondent knew of their illicit origin. Put another way, absent some dirtying of the funds, there would have been nothing for respondent to wash. And the determination that particular funds were illegally derived is central to the purpose and proper application of the federal

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numerous federal crimes") cert. denied, 513 U.S. 896 (1994); *United States* v. *Stavroulakis*, 952 F.2d 686, 691 (2d Cir.) (money laundering prohibitions were enacted "[b]ecause individuals who are willing to conceal the source of illegal booty have become so necessary to the secrecy that * * * drug dealers cherish"), cert. denied, 504 U.S. 926 (1992).

money laundering provisions. See pp. 16-17, *supra*. If the court of appeals believed that the site of the laundering transactions alone is determinative of the venue question, its analysis cannot be squared with this Court's recognition that a federal criminal charge may be tried "where any part can be proved to have been done." *Lombardo*, 241 U.S. at 77.

Alternatively, the court of appeals may have concluded that venue should be limited to Florida because that was alleged to be the site of respondent's own criminal conduct. Neither the Constitution nor Section 3237(a), however, limits venue to the district where the defendant's own malfeasance occurred. In a variety of circumstances, venue in a federal criminal prosecution has been held proper despite the absence of evidence that the defendant had personally committed any criminal act, or indeed had ever been physically present, in the district where the prosecution was brought. See, *e.g.*, *Armour Packing Co.* v. *United States*, 209 U.S. 56, 76 (1908) ("The constitutional requirement is as to the locality of the offense and not the personal presence of the offender.").

An offense involving the use of the mails, for example, may be prosecuted "in any district from, through, or into which" the materials pass in transit. 18 U.S.C. 3237(a). See *In re Palliser*, 136 U.S. 257, 266 (1890) (holding, under predecessor version of general venue statute, that an offense committed through the use of the mails could be prosecuted in the district where the letter is received); *United States* v. *Johnson*, 323 U.S. 273, 275 (1944) (consistent with the Constitution, "an illegal use of the mails or of other instruments of commerce may subject the user to prosecution in the district where he sent the goods, or in the district of their arrival, or in any

intervening district"). A prosecution for obstruction of justice may be brought in the district where the obstructed judicial proceedings occurred, even if the defendant's obstructive acts took place at another location.[7] And prosecutions under the Hobbs Act for obstructing, delaying, or affecting interstate commerce by means of robbery or extortion, 18 U.S.C. 1951(a), may be brought in the district where the requisite effect on interstate commerce is felt, as well as in the district where the robbery or extortion takes place.[8]

It is clear, in particular, that a federal crime can be "committed," for purposes of constitutional and statutory venue provisions, in a district where an element of the offense has been performed by some person other than the defendant. In *Hyde* v. *United States*, 225 U.S. 347 (1912), the defendants were convicted of conspiracy to defraud the United States out of public land located in Oregon and California. See *id.* at 349-351. The prosecution was brought in the District of Columbia, based on a co-conspirator's performance in

[7] See, *e.g.*, *United States* v. *Cofield*, 11 F.3d 413, 415-419 (4th Cir. 1993), cert. denied, 510 U.S. 1140 (1994); *United States* v. *Frederick*, 835 F.2d 1211, 1212-1215 (7th Cir. 1987), cert. denied, 486 U.S. 1013 (1988); *United States* v. *Reed*, 773 F.2d 477, 484-486 (2d Cir. 1985); *United States* v. *Barham*, 666 F.2d 521, 523-524 (11th Cir.), cert. denied, 456 U.S. 947 (1982); *United States* v. *Tedesco*, 635 F.2d 902, 904-906 (1st Cir. 1980), cert. denied, 452 U.S. 962 (1981). But see *United States* v. *White*, 887 F.2d 267, 272 & n.3 (D.C. Cir. 1989) (R.B. Ginsburg, J.) (holding that under prior circuit precedent, prosecution for bribery or obstruction of justice can be brought only in the district where the bribe or obstructive act took place).

[8] See *United States* v. *Stephenson*, 895 F.2d 867, 875 (2d Cir. 1990); *United States* v. *Lewis*, 797 F.2d 358, 367 (7th Cir. 1986), cert. denied, 479 U.S. 1093 (1987).

that district of overt acts in furtherance of the conspiracy; it was not alleged either that the defendants had entered the District of Columbia or that the conspiracy had been formed there. See *id.* at 356-357. The Court held that venue in that district was properly based on the performance of overt acts by the defendants' co-conspirator. *Id.* at 356-367. The courts of appeals have uniformly concluded that venue in a conspiracy prosecution brought under 18 U.S.C. 371 is proper in any district in which an overt act in furtherance of the conspiracy was committed by *any* of the conspirators.[9] The courts of appeals have similarly recognized that "one accused under 18 U.S.C. § 2(a) of aiding or abetting in the commission of some substantive crime may be prosecuted not only where he committed the accessorial acts, but also where the principal committed the substantive crime." *United States* v. *Griffin*, 814 F.2d 806, 810 (1st Cir. 1987).[10] Cf. *Strassheim* v. *Daily*, 221 U.S. 280, 285 (1911) ("Acts done outside a jurisdiction, but intended to produce and producing detrimental effects

[9] See, *e.g.*, *United States* v. *Bascope-Zurita*, 68 F.3d 1057, 1062 (8th Cir. 1995), cert. denied, 116 S. Ct. 741 (1996); *United States* v. *Heaps*, 39 F.3d 479, 482 (4th Cir. 1994); *United States* v. *Smith*, 918 F.2d 1551, 1557 (11th Cir. 1990); *United States* v. *Uribe*, 890 F.2d 554, 558 (1st Cir. 1989); *United States* v. *Meyers*, 847 F.2d 1408, 1411 (9th Cir. 1988).

[10] Accord, *e.g.*, *United States* v. *Mendoza*, 108 F.3d 1155, 1156 (9th Cir.), cert. denied, 118 S. Ct. 351 (1997); *United States* v. *Brantley*, 733 F.2d 1429, 1434 (11th Cir. 1984), cert. denied, 470 U.S. 1006 (1985); *United States* v. *Kibler*, 667 F.2d 452, 455 (4th Cir.), cert. denied, 456 U.S. 961 (1982); *United States* v. *Buckhanon*, 505 F.2d 1079, 1083 (8th Cir. 1974); *United States* v. *Gillette*, 189 F.2d 449, 451-452 (2d Cir.), cert. denied, 342 U.S. 827 (1951).

within it, justify a State in punishing the cause of the harm as if he had been present at the effect.").

Thus, when a defendant's criminal acts are performed in concert with other wrongdoers, he is subject to prosecution in the districts where his confederates' criminal conduct occurred. Where the effect of a defendant's criminal conduct is felt in another district, and where proof of that effect establishes an element of the charged offense, the defendant may generally be prosecuted in the district where that effect is felt. Prosecution of respondent in the Western District of Missouri fits comfortably within those principles. The money laundering activities in which respondent is alleged to have engaged have been proscribed precisely because they may facilitate profitable commission of drug trafficking crimes. And while the defendant in a money laundering case need not be shown to have participated in the "specified unlawful activity," the government is required to prove that the laundered funds were criminally derived and that the defendant knew of their unlawful origin. Thus, both "the nature of the crime alleged and the location of the act or acts constituting it," *Anderson*, 328 U.S. at 703, support the conclusion that respondent may be prosecuted for money laundering at the site of the "specified unlawful activity."

If respondent, while physically present in Florida, had furnished material assistance to ongoing drug trafficking activities in the Western District of Missouri, she would be subject to prosecution in that district either as a conspirator or as an aider and abettor of the trafficking crimes. See pages 20-21, *supra*. Even if respondent's criminal *conduct* occurred entirely in Florida, her *offense*—some elements of which would involve the conduct of other persons—would have been committed in Missouri as well. The fact that the financial transactions charged in the indictment in this case are alleged to have taken place *after* the occurrence of the predicate "specified unlawful activity" does not alter that analysis. Proof that the funds in question were unlawfully derived is an essential element of the Section 1956 and 1957 offenses, and the effect of those offenses is most palpably felt in the district where the predicate crimes occurred. Thus, while the deposit and withdrawals (see Pet. App. 19a-20a) in which respondent is alleged to have engaged "began, continued, and were completed only in Florida," Pet. App. 4a, the *offenses* with which she was charged were committed in Missouri as well.

C. Prosecution Of Money Laundering Offenses In The District Where The "Specified Unlawful Activity" Occurred Furthers The Purposes Of The Pertinent Constitutional And Statutory Venue Provisions

1. The requirement that a criminal offense be prosecuted in the district where the crime was committed serves, first and foremost, as "a safeguard against the unfairness and hardship involved when an accused is prosecuted in a remote place."[11] *United States* v. *Cores*, 356 U.S. 405, 407 (1958). See also, *e.g.*, *Johnson*, 323 U.S. at 275 (Article III's venue

[11] A defendant may, of course, waive that right. If the prosecution is brought in a permissible venue, the district court is authorized to transfer the case to another district for trial upon motion of the defendant, either because the defendant could not receive a "fair and impartial trial" in the forum district, Fed. R. Crim. P. 21(a), or "[f]or the convenience of parties and witnesses," Fed. R. Crim. P. 21(b).

requirement reflects the Framers' "[a]ware[ness] of the unfairness and hardship to which trial in an environment alien to the accused exposes him"). The Declaration of Independence lists, among the colonists' grievances, the assertion that British authorities had passed laws "[f]or transporting us beyond Seas to be tried for pretended offenses." See generally Drew L. Kershen, *Vicinage*, 29 Okla. L. Rev. 801, 805-809 (1976) (discussing colonial background of constitutional venue requirements); *United States* v. *Busic*, 549 F.2d 252, 257 (2d Cir. 1977) (a "significant source of these constitutional standards * * * can be discerned in the vigorous reaction of the American colonists evoked by Parliament's provision that trials of individuals accused of treason in Massachusetts be conducted in England"). The Constitution accordingly provides for trial where the crime "shall have been committed."[12]

The requirement that a criminal offense be prosecuted in the district where it was committed protects the ability of an accused person to mount an effective defense by increasing the likelihood that relevant evidence can be discovered and produced at trial. As one commentator has explained:

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[12] The Constitution does not guarantee a criminal defendant the right to trial in his place of residence, since the place where an offense is committed "may or may not be the place where the defendant resides." *Anderson*, 328 U.S. at 705. See also Kershen, *supra*, 29 Okla. L. Rev. at 811 ("Although the constitutional draftsmen expected that the place of the commission of the crime and the residence of the accused would ordinarily coincide, if the two places did not, the draftsmen chose the place of the commission of the crime as the appropriate test for determining venue.").

> The complainant and the witnesses to the alleged crime most likely live in the vicinity of the place of the incident's occurrence. Tangible evidence of the alleged crime is to be found, most probably, in the vicinity of the place of commission. Hence, the defendant ought to be able more easily to investigate the alleged crime, to obtain interviews with the witnesses to the alleged crime, to present the evidence found during the investigation at trial, and to insure the presence of the witnesses at trial if it is held near the place of the commission of the alleged crime than would be so if the trial were held at a distant location.

Kershen, *supra*, 29 Okla. L. Rev. at 810.

Allowing money laundering prosecutions to be brought in the district where the predicate "specified unlawful activity" occurred is at least as likely to further the defendant's ability to procure relevant evidence and present a vigorous defense as trial in the district where the defendant's financial transactions took place. In many prosecutions brought under the federal money laundering statutes, 18 U.S.C. 1956, 1957, the principal issue in dispute is the origin of the funds involved in the pertinent financial transactions, rather than the fact of the transactions or the defendant's responsibility for them. In the present case, for example, proof that respondent made the deposit and withdrawals alleged in the indictment (see Pet. App. 19a-20a) is likely to be simple and straightforward regardless of the district in which the prosecution is brought. Determining whether the funds in question were derived from "specified unlawful activity" is more likely to require extensive evidentiary proceedings, and the relevant witnesses and

physical evidence are more likely to be found in Missouri than in Florida. Prosecuting a defendant for money laundering in the district where the "specified unlawful activity" occurred therefore does not involve the type of governmental abuse that the Constitution's venue limitations were intended to prevent.

Federal prosecutors frequently wish to try money laundering counts together with charges for the substantive criminal offenses that generated the tainted funds. Because the government must prove in a money laundering prosecution that the pertinent funds were generated through "specified unlawful activity," that practice conserves the resources of the parties and the courts. A requirement that money laundering charges be filed in the district where the defendant's financial transactions are alleged to have occurred would impair the efficient conduct of such prosecutions. At least in some cases, such a rule would force the government to choose between undertaking duplicative efforts to prove the existence of the specified unlawful activity, on the one hand, or foregoing the money laundering prosecution, on the other. Compare *United States* v. *Pomranz*, 43 F.3d 156, 161 (5th Cir.), cert. denied, 116 S. Ct. 513 (1995). Absent any persuasive reason to believe that fixing venue at the place of those transactions would typically assist the accused in preparing his defense, such an impairment is unwarranted.

2. The requirement that a criminal prosecution be brought in the district where the offense occurred also serves to protect the interest of the victimized community both in participating (through the jury) in the administration of the criminal justice system and in observing the process by which justice is administered. See *United States* v. *Palma-Ruedas*, 121 F.3d 841, 862 (3d Cir. 1997) (Alito, J., dissenting) ("Recent scholarship has suggested another possible purpose [of the Constitution's venue and vicinage provisions]: to protect a community's right to have trials of local offenses occur in the community."), petition for cert. pending *sub nom. United States* v. *Rodriguez-Moreno*, No. 97-1139; Akhil R. Amar, *The Constitution and Criminal Procedure—First Principles* 124 (1997) ("Underlying the district clause [of the Sixth Amendment] is also, perhaps, the idea that a crime—unlike a civil wrong—constitutes a moral rupture, a distinct breach of the peace of the place where the crime occurred.").[13] The requirement that a criminal trial be held at the place where the offense occurred thus complements the Sixth Amendment requirement

[13] An Act of Parliament passed in 1774 provided that persons accused of murder or other capital offenses in Massachusetts Bay could be tried in an adjoining province or in England if the governor determined that the defendant was engaged in the suppression of riots or the enforcement of the revenue laws, and that an "indifferent trial" could not be had in Massachusetts Bay. See William W. Blume, *The Place of Trial of Criminal Cases: Constitutional Vicinage and Venue*, 43 Mich. L. Rev. 59, 63 (1944); see also Kershen, *supra*, 29 Okla. L. Rev. at 807 (stating that the statute "was primarily intended to provide protection to British soldiers such as those involved in the Boston Massacre"). The Declaration of Independence listed among the colonists' grievances the passage of British legislation "[f]or protecting [British troops], by a mock Trial, from punishment for any murders which they should commit on the Inhabitants of these States." The Declaration of Independence thus reflects not only the view that the rights of criminal defendants could be prejudiced by trial in a remote location (see p. 24, *supra*), but also a concern that trial at a distant site could impair the prerogatives of the victimized community. See Amar, *supra*, at 243 n.163.

that the trial be "public," a requirement that has been recognized to serve the interests of both the defendant and the victimized community. See, *e.g.*, *Richmond Newspapers, Inc.* v. *Virginia*, 448 U.S. 555, 564-573 (1980) (opinion of Burger, C.J.); *id.* at 589-597 (Brennan, J., concurring in the judgment).

The pertinent constitutional and statutory provisions thus serve in part to ensure that the administration of the criminal justice system is responsive and visible to members of the community most directly affected by episodes of criminal conduct. With respect to the money laundering offenses defined by Sections 1956 and 1957, those concerns weigh in favor of trial in the district where the "specified unlawful activity" occurred. As we explain above, the conduct proscribed by Sections 1956 and 1957 is harmful because it facilitates the commission of the predicate offenses by enabling criminals to escape detection while retaining their illicit profits. The community in which the predicate crimes occur—in this case, the Western District of Missouri—is thus the community most directly victimized by violations of the money laundering statute. It is therefore appropriate to seek to vindicate the community's interests by trial in that district.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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